

UNIVERSIDAD DEL SALVADOR
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ESPECIALIDAD INGLES

INSTRUMENTS AND MECHANISMS OF PAYMENT IN
INTERNATIONAL COMMERCE.
PROSPECTS FOR THIS NEW CENTURY

DOCTORANDO

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This work has been carried out to show the need of knowing and implementing the new technology in international commerce, in order to be successful in the present century . It also demonstrates the importance of a paperless commerce and of becoming a member of the international electronic community.

Furthermore, it points out how essential it is for a bank , whether it belongs to the Nation, Provinces or it is private, to be included in this process as quickly as possible, profiting from the advantages these mechanisms offer.

The documents and illustrations enclosed herein, especially those of Bolero, are the ones accepted by the United Nations, the International Banking Association and the International Chamber of Commerce.

I sincerely hope this work will help to understand the new world we are living in now and therefore, to act accordingly in order to avoid being left aside.

TABLE OF CONTENTS

CHAPTER I

BANKING MECHANISMS OF PAYMENT FOR THE OPERATIONS OF INTERNA- TIONAL COMMERCE.

INTRODUCTION.....	9
1.1. BACKGROUND.....	11
1.2. A COMPARISON WITH ARGENTINA IN THE SAME PERIOD: 1920.....	18
1.3. THE DEVELOPMENT OF DOCU- MENTARY CREDIT DURING THE SEC- OND WORLD WAR.....	20
1.4 INSTRUMENTS OF PAYMENT IN INTERNATIONAL COMMERCE NOWADAYS..	20
1.5 ENFORCEMENT REGULATIONS.....	23
1.6 THE I.C.C. (INTERNATIONAL CHAMBER OF COMMERCE).....	24
BROCHURE 522 OF THE I.C.C.....	27
1. PARTIES THAT INTERVENE IN A COLLEC- TION.....	28
2. INTERNATIONAL BUYING AND SELLING	

TRANSACTION. USES.....	30
COLLECTION INSTRUCTIONS.....	31

CHAPTER II.....33

1. WHAT IS UNDERSTOOD BY CREDITS, DOCUMENT- ARY COLLECTIONS AND BANKING REIMBURSEMENTS.....	33
3 THE DOCUMENTARY ORDER OF PAYMENT.....	35
4 BANKING ENDORSEMENT FOR INTERNATIONAL BUYING AND SELLING TRANSACTIONS.....	35
4.1. SPECIAL TERMINOLOGY FOR DOCUMENTARY CREDITS OR LETTERS OF CREDIT.....	36
4.2. THE LEGAL NATURE OF DOCUMENTARY CREDIT IN ARGENTINA.....	41
4.3. DIFFERENT CATEGORIES OF DOCUMENTARY CREDITS OR LETTERS OF CREDIT.....	43
5. DIFFERENT WAYS OF FINANCING L/Cs IN INTERNA- TIONAL COMMERCE. USUAL MECHANISMS.....	48
THE PURCHASE OF DOCUMENTS AND ALADI GUA-	

	RANTEES.....	51
6.	DRAFTS.....	54
	TYPES OF DRAFTS.....	55
	CLEAN AND DOCUMENTARY DRAFTS.....	56
7.	THE STAND-BY LETTER OF CREDIT.....	57
8.	BANK LETTER OF CREDIT POLICY IN U.S.A.	
	HOW IT WORKS AT THE EXPORT-IMPORT BANK	
	OF THE UNITED STATES.....	59
	POLICY PURPOSE.....	59
	FINANCIAL INSTITUTION BUYER CREDIT POLICY...	60
	UMBRELLA POLICY.....	60
	EXPORT-IMPORT BANK OF THE UNITED STATES.	
	SAMPLE PROVISIO WORDING FOR L/Cs.....	60
9.	BANKING REIMBURSEMENT ACCORDING TO	
	WHAT IS PAID BY THE DOCUMENTARY CREDIT... ..	61
	DIRECT REIMBURSEMENT FROM THE ISSUING	
	BANK TO THE PAYING BANK FROM THE MONEY	
	PAID TO THE BENEFICIARY.....	62
	REIMBURSEMENT THROUGH A REIMBURSING	
	BANK. THE RULES AT THE U.C.P. 500.....	62
	BROCHURE 525 (I.C.C.).....	63
	AS TO THE EXPIRATION DATE	64

ALADI REIMBURSEMENTS THROUGH CENTRAL BANKS. AGREEMENT FOR RECIPROCAL PAY- MENTS AND CREDITS.....	65
WHEN WERE CREATED THE RECIPROCAL PAYMENT AND CREDIT AGREEMENT	65
10. OTHER INSTRUMENTS OF PAYMENT AND COLLECTION. THE FACTORING ENTERPRISE IN ARGENTINA. WHAT IS UNDERSTOOD BY FACTORING?.....	66
ITS HISTORY.....	68
HOW IT WORKS.....	70
LAW OF FINANCIAL ENTITIES (21.256). WHO CAN CONTRACT A FACTORING ENTERPRISE.....	72
THE CONTRACT CHARACTERISTICS. FACTOR- ING CORPORATIONS. DIFFERENT TYPES OLD LINE FACTORING.....	73
NEW STYLE FACTORING. INTERNATIONAL FACTORING.....	73

CHAPTER III

INSTRUMENTS AND MECHANISMS OF PAYMENT

IN THIS THIRD MILLENNIUM: A REVOLUTION IN THE GLOBAL WORLD.....	76
3.1. WHAT IS S.W.I.F.T.? THE IMPORTANCE OF THE S.W.I.F.T. SYSTEM AND THE NEW VIRTUAL MOVEMENT OF DOCUMENTS WITHIN THE INTERNATIONAL ELECTRONIC COMMERCE... ..	76
3.2. S.W.I.F.T.'s HISTORY.....	78
3.3. ABOUT B.O.L.E.R.O. NET.JOINING THE ELEC- TRONIC TRADE REVOLUTION.....	79
3.4. WHAT DOES BOLERO CONSIST OF?	80
3.5. IN THE ARGENTINE REPUBLIC.....	83
HOW DOES BOLERO BENEFIT OWNERS? HOW MAY AGENTS BENEFIT FROM BOLERO?.....	84
WHAT OTHERS ARE SAYING ABOUT THE BENE- FITS OF USING BOLERO SYSTEM.....	85
HOW THESE TERMS ARE MAKING AN IMPORTANT CONTRIBUTION TO UNIVERSAL COMMON ENGLISH LANGUAGE.....	86
3.6. TECHNICAL TERMINOLOGY IN THE THIRD MILLENNIUM. DEFINITIONS AND IN- TERPRETATION. ENGLISH AS A UNIVERSAL COMMERCIAL LANGUAGE.....	91

3.6.1. DEFINITIONS.....	91
3.6.2. INTERPRETATION.....	98
FINAL CONCLUSION.....	99
REFERENCES.....	106
ILLUSTRATIONS.....	108



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CHAPTER I

1. BANKING MECHANISMS OF PAYMENT FOR INTERNATIONAL COMMERCIAL TRANSACTIONS

INTRODUCTION

The risks in commercial transactions are higher in foreign commerce.

Many are the reasons: the distance between the buyer and the seller; the danger and uncertainty of oceanic transport; the terms necessary for the credit; the difficulties in knowing the buyer's morale and financial capacity and finally the risks due to foreign exchange.

Because of these difficulties, the transaction called "Documentary Credit", is for banks an instrument of payment in foreign commerce, having a minimum cost and the smallest possible risk, through which, an exchange of products is done among people who are reciprocally unknown.

In this transaction, the bank is linked to the importer/exporter, but is independent from their reciprocal obligations. Moreover, this instrument of payment in commercial transactions, allows the exporter to transport the

amount of money due for his sale, immediately after the shipment of the goods.

The subject of export credit and financing facilities, is attractive primarily because the buyer's choice of his supplier is influenced by the terms of payment offered. Additional factors influencing an importer's decision as to where and from whom to purchase include: transit time for his purchases; the necessity to pay duties and taxes immediately upon landing goods; the high cost of borrowing funds and the turnover rate of goods after their reception. Conversely, the exporter must visualize these elements to understand the problems which confront his prospective customer or client. In examining his own position, the exporter must weigh those cogent considerations against the credit practices in his line, here and abroad; the buyer's credit standing; the supply situation of his goods; his own financial strength; the availability of dollar exchange; the imposition of exchange controls and the prevailing economic and political conditions in the importer's native land.

This analysis is basic to the comprehension of the reasons of the buyer abroad of the reasons why, when other aspects are fairly equal, he could conceivably prefer to transact business with his competitor.

About the financing of the exportation and importation of goods by means of bankers' commercial credits, it could be said that it is a device which, in

its modern form, is the creation of the mercantile genius of the British people. It is somewhat surprising, therefore, that in the English legal literature, there is no specific treatise dealing with these credits from a legal standpoint. There are only various series of English law reports on this subject.

1.1 BACKGROUND

However, in some authors' opinion the origin of the legal term "documentary credit", is included in the *receptum argentariorum* of ancient Rome ¹. A Bank was obliged to pay the debt belonging to some other Bank, and this engagement continued to exist even in the case of the disappearance of the original debt.

It is also believed that the modern documentary credit has its particular origin in the Letter of Credit, through which, traders and businessmen could get means of payment abroad, provided they themselves delivered the goods.

¹ Girard, *Manuel Élémentaire de droit romain*; and Sohm-Mitteis-Wenger, *Institutionen des römischen Rechtes*.

According to another version, the most ancient form of documentary credit, would be represented by credit through the issuing of drafts, and its development could be explained as follows² : due to certain English traders' reputation, their foreign suppliers collected their money through the issuing of a draft, while other importers abroad had to submit to worse conditions. Therefore, they had to seek for an English company having a good credit and ask it to pay or accept the draft, remunerating it through a certain sum of money. So, this is how the possibility of paying debts through drafts having a long term was created and during this term sellers could find the money in cash by using a discount on these drafts. Then, this would be the modern documentary credit, of course in a rudimentary way, widely used in England and also in the Netherlands in the following centuries: XVII, XVIII and XIX. According to Cahn, the documentary credit probably was developed in both ways.

The fact is that before 1914, London practically had the monopoly of this instrument of payment in the so-called "accepting houses", which appeared after the famous "merchant bankers", and dealt with this type of operations.

² E.M.Cahn, O'Hara, *Banker's Magazine*, 1922